

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
W. J. SASSER)

Appearances:

For Appellant: W. J. Sasser, in pro. per.

For Respondent: Israel Rogers, Assistant Counsel

O P I N I O N

This appeal is made pursuant to Section 19059 of the Revenue and Taxation Code from the action of the Franchise Tax Board denying the claims of W. J. Sasser for refund of personal income tax in the amounts of \$50.00, \$117.52, \$162.79 and \$93.66 for the years 1952, 1953, 1954 and 1955, respectively.

The primary question in this appeal is whether Appellant W. J. Sasser was a resident of California during the above mentioned years.

Appellant entered military service in 1943; prior to that time he lived with his parents in California. Upon his honorable discharge from the United States Navy in July of 1946, at Lido Beach, New York, Appellant hitchhiked across country, pausing in his journey to visit his sister in Wisconsin and her husband's family in Kansas. Then he continued on to Tulalake, California, to see his parents. In December of that year Appellant secured employment with the Western Electric Company, working in Klamath Falls, Bly, Eugene and Springfield, Oregon. The following November he transferred to Washington, D. C., working there until September of 1948.

Appellant left the nation's capital, intent upon reaching Texas. On his way, he again visited his sister in Wisconsin. She prevailed upon Appellant to seek employment in that area. After a short-lived job as a truck driver, Appellant was employed by the Radio Corporation of America (RCA) in November, 1948. This job lasted until June of 1950 during which time Appellant worked in Wilmette, Oak Park, and St. Charles, Illinois. He lived at two different addresses while in Oak Park and had two addresses in St. Charles. RCA in Illinois refused Appellant's request to transfer to RCA in San Francisco and he left his job shortly thereafter.

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Appellant journeyed to California hoping to interest friends in going to Alaska and homesteading land with him. This plan was not successful, however, and so after visiting Wisconsin again, he was employed by RCA in San Francisco. This job lasted from late July to November of 1950. Thereafter, Appellant attended a trade school in San Francisco for a short time.

Early in 1951 Appellant again visited Wisconsin where he purchased an automobile for his father. This car was registered in Appellant's name; however, because his father was receiving old age benefits and was limited in the amount of property he could own. In April Appellant was hired by the United States Navy as a civilian Radio Officer in the Military Sea Transportation Service, Pacific (MSTSP), and was assigned to a ship then docked in Oakland, California. As Radio Officer, Appellant was required to remain on board ship from 8:00 A.M. to 5:00 P.M. during all stays in port, with Saturdays, Sundays and holidays excepted. He was permitted to leave his employment in any United States port.

Beginning on April 23, Appellant made a series of four voyages in the Pacific, returning, in each case, to Oakland. On November 12, 1951, he was laid off for a short time which he spent visiting his brother in Chico, visiting his parents in Tulalake and traveling in Oregon.

Rehired in February 1952, Appellant was sent to join a ship in Seattle, Washington. He made one voyage to Alaska and was then assigned another ship in Seattle which went to the Orient, returning to San Francisco. There followed a series of voyages to the Orient and one cruise circumnavigating the globe, all of which terminated in San Francisco.

In March 1953, Appellant was assigned to another ship and thereafter spent very little time in California, making only occasional stops in the Bay area. During that year he acquired a house and lot in Oregon. On January 10, 1955, Appellant flew to the Orient under contract to spend a year on vessels in the Far East for the Western Pacific division of the Military Sea Transportation Service. He returned to the United States in February of 1956 as Radio Officer on a ship bound for Seattle.

Appellant remained unmarried during the period under review and most of his time in California was spent visiting family and friends. He spent a total of four months here during 1952, three months in 1953, one month in 1954 and ten days in 1955. Appellant spent more time in California than any other state although it was a minority of the total time spent ashore, including time spent in foreign countries.

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Appellant's brother, who is a certified public accountant, filed federal income tax returns for him with the District Erector in San Francisco for the years 1951 through 1955. Appellant had bank accounts in California and Illinois. The car Appellant had given his father was registered in California and Appellant had a California driver's license. However, during his travels, Appellant also acquired driver's licenses in Oregon, Wisconsin and Illinois. Appellant owned no property in this state.

Appellant did not file California personal income tax returns *for* the years in question. In 1955, one of Respondent's agents informed Appellant that he was not a resident of this state during the year 1952. Upon further investigation, however, Respondent determined that Appellant was a resident during the years on appeal, including 1952, and issued the assessments here under review. After these assessments had become final Appellant began paying them off in installments of \$50 each. The first two payments were received by Respondent on February 2, 1960, and March 15, 1960, respectively. Respondent applied the first payment to extinguish Appellant's 1952 assessment and each subsequent payment was credited against the oldest unpaid assessment. Appellant filed a claim for refund of the amounts so paid on April 18, 1961.

Section 17013 of the Revenue and Taxation Code (now 17014) provides that every individual who is in this state for other than a temporary or transitory purpose or who is domiciled here and **is** outside the state for a temporary or transitory purpose, is a resident. We have no hesitation in finding that the time Appellant spent in this state, between voyages, was for a temporary or transitory purpose. However, the Franchise Tax Board contends that Appellant was domiciled in this state, in which case he must be considered a resident unless his absences were for other than a temporary or transitory purpose

The Franchise Tax Board's regulations define domicile as the place where an individual has his true, fixed, permanent home and to which place he has an intention to return whenever absent. It is further defined as the place where an individual has fixed his habitation and has a permanent residence without any present intention of permanently removing therefrom. An individual can have but one domicile at any one time and once he acquires another elsewhere. (Cal. Admin. Code, Tit. 18, Reg. 17013-17015(c) [now Reg. 17014-17016(c)].)

Appellant contends that he was a resident of Illinois. Since he was not present in that state during the period on appeal, we infer that Appellant, who is not trained in the law, intended to say that he was domiciled in Illinois. We must reject this contention.

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There is no proof that Appellant ever established a fixed, permanent home in Illinois or that he intended to remain there indefinitely. Indeed, Appellant's whole existence, from the time he was discharged from the service, seems to be characterized by its impermanence and lack of real ties to any one place. During the less than two years spent in Illinois, Appellant lived in three different communities and had at least five different addresses. There is nothing in the record to support a conclusion that he was domiciled there. Since Appellant was domiciled here prior to his entry into the war and it appears that he never acquired a domicile elsewhere, he remained domiciled in California throughout his travels.

We are of the opinion, however, that Appellant's absences from this state during the years on appeal were for other than a temporary or transitory purpose. In becoming a Radio Officer with MSTSP, Appellant embarked upon a career that took him away from California for substantial periods of time. His ship assignments were dictated by the needs of MSTSP. Since his engagement as a Radio Officer was for an indefinite period of time, it is reasonable to believe that he intended to remain in that employment as a career or at least for several years, going wherever his job took him. As suggested by the diminishing amounts of time spent in California, Appellant did not seek work which would permit regular visits here. The fact that he voluntarily contracted to work a full year in the Far East supports the opposite conclusion. It is clear that Appellant intended to return to this state only when, as and if his employment brought him here.

While the amount of time spent in California is not controlling in itself, we are impressed by the short, irregular periods involved here, particularly in the last two years on appeal. An additional factor is the lack of any substantial ties with this state. While Appellant's parents and a brother lived here, his visits to see them were dictated by his circumstances. Appellant made no apparent effort to remain close to them. Certainly they do not assume the significance that a wife or children living here would. The filing of federal income tax returns in San Francisco was merely a matter of convenience for Appellant's brother, who made out the returns while Appellant was at sea. The only property Appellant owned was in Oregon. He owned no property and had no business connections here. None of his income was earned here. His California bank account was maintained with the Bank of America because of its international connections. On the record before us, we are compelled to conclude that Appellant's purpose in absenting himself from California during the years on appeal was more than merely temporary or transitory in nature and that he was therefore not a resident of this state.

As previously noted, Appellant paid the assessments in \$50 installments, the first reaching the Franchise Tax Board on

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February 2, 1960, and the next on March 15 of that year. Respondent contends that since Appellant did not file any claim for refund until April 24, 1961, more than a year after the last date above, his claim is barred by the statute of limitations as to those two installments. We must agree.

The relevant portion of Section 19053 of the Revenue and Taxation Code requires that a claim for refund must be filed within "one year from the date of overpayment." It is clear that since Appellant was not a California resident, every payment he made was an "overpayment." We are compelled to conclude that the clear, unambiguous language of the statute will permit but one result. If Appellant is to be given a refund of the overpayments he made on February 2 and 15, 1960, he must meet the requirements laid down by the Legislature, that is he must have filed a claim or claims for those amounts within one year from the date of the overpayments. This he did not do.

O R D E R

Pursuant to the views expressed in the opinion of the Board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to Section 19060 of the Revenue and Taxation Code, that the action of the Franchise Tax Board denying the claims of W. J. Sasser for refund of personal income tax in the amounts of \$50.00, \$117.52, \$162.79 and \$93.66 for the years 1952, 1953, 1954 and 1955 respectively, be sustained with respect to Appellant's first two payments in the total amount of \$100, and reversed in all other respects.

Done at Sacramento, California, this 5th day of November, 1963, by the State Board of Equalization.

John W. Lynch, Chairman
Paul R. Leake, Member
Geo. R. Reilly, Member
_____, Member
_____, Member

ATTEST: H. F. Freeman, Executive